

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

FOREST GUARDIANS, SANTA FE
FOREST WATCH,

Plaintiffs,

vs.

Civ. No. 04-11 MCA/RHS

UNITED STATES FOREST SERVICE, and
UNITED STATES FISH AND WILDLIFE
SERVICE,

Defendants.

**FINDINGS OF FACT
AND RECOMMENDED DISPOSITION**

THIS MATTER having come before the Court by Order of Reference [docket no. 40], and the undersigned United States Magistrate Judge having conducted an evidentiary hearing on October 29, 2004, and considered the arguments and authorities propounded by the respective parties as well as the pleadings on file in the above captioned cause, and being otherwise fully advised in the premises, hereby enters the following Findings of Fact:

1. This cause is a challenge to the August 6, 2003, decision by the United States Forest Service to approve a timber sale in Santa Fe National Forest known as the Lakes and BMG Wildlife Timber Salvage Sale.
2. It is stipulated and agreed that Plaintiffs are entitled to their reasonable attorneys fees and costs under EAJA.
3. It is stipulated and agreed that Plaintiffs are eligible for a fee award under EAJA.

4. Plaintiffs' total request for fees and costs is \$39,774.82. Defendants urge the Court to limit the award of fees and expenses to \$17,000.

5. The relief and claim sought by Plaintiffs in this case are so intertwined as they preclude separate analysis. Plaintiffs are entitled to attorneys fees and expenses which are commensurate with the results it has obtained.

6. Plaintiffs obtained injunctive relief directed at roughly 70% of the total acreage which was the subject of this litigation. Further, in ecological terms, Plaintiffs obtained relief relative to Unit 6 which was the most valuable from an ecological prospective.

7. A reasonable attorneys fee is therefore 70% of the amount sought as this is accurately commensurate with the relief obtained.

8. Plaintiffs are therefore entitled to \$27,842.37 for fees and costs in this case.

IT IS THEREFORE RESPECTFULLY RECOMMENDED that Plaintiffs be compensated for reasonable attorneys fees and costs in the amount of \$27,842.37.

Any party wishing to object to the above proposed findings, analysis, and recommended disposition as described in 28 U.S.C. §636(b)(1)(C) shall file said objections within ten (10) days of the entry of the instant proposed disposition.

Robert Hayes Scott
ROBERT HAYES SCOTT
UNITED STATES MAGISTRATE JUDGE

I hereby certify that I have mailed copies via the U.S. Postal Service of this document to counsel of record on the 15th day of November, 2004.

Carla Eyberg, Administrate Assistant to Judge Scott